



Senate

General Assembly

File No. 136

February Session, 2008

Substitute Senate Bill No. 515

Senate, March 25, 2008

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING INTERNET WEB SITE TRACKING OF CONSUMER DATA.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2009*) As used in this section
2 and section 2 of this act:

3 (1) "Commercial web site operator" means any business entity that
4 sells, leases, or offers to sell or lease goods or services intended
5 primarily for personal, family or household use and such business
6 entity operates an Internet web site with such entity's commercial
7 name, whether or not such web site is operated by another person
8 pursuant to a contract with the business entity.

9 (2) "Direct marketing purposes" means the use of personal
10 information to solicit or induce a purchase, rental, lease or exchange of
11 products, goods, property or services directly to individuals by means
12 of the mail, telephone or electronic mail for their personal, family or
13 household purposes. The sale, rental, exchange or lease of personal

14 information for consideration to businesses is a direct marketing
15 purpose of the business that sells, rents, exchanges or obtains
16 consideration for the personal information. Direct marketing purposes
17 does not include the use of personal information: (A) By bona fide tax
18 exempt charitable or religious organizations to solicit charitable
19 contributions, (B) to raise funds from and communicate with
20 individuals regarding politics and government, (C) by a third party
21 when the third party receives personal information solely as a
22 consequence of having obtained for consideration permanent
23 ownership of accounts that might contain personal information, or (D)
24 by a third party when the third party receives personal information
25 solely as a consequence of a single transaction where, as a part of the
26 transaction, personal information had to be disclosed in order to
27 effectuate the transaction.

28 (3) "Disclose" means to disclose, release, transfer, disseminate or
29 otherwise communicate orally, in writing, or by electronic or any other
30 means to a third party.

31 (4) "Established business relationship" means a relationship formed
32 by a voluntary, two-way communication between a business and a
33 consumer, with or without an exchange of consideration, for the
34 purpose of purchasing, renting or leasing real or personal property or
35 any interest therein, or obtaining a product or service from the
36 business, if the relationship is ongoing and has not been expressly
37 terminated by the business or the consumer or if the relationship is not
38 ongoing, but is solely established by the purchase, rental or lease of
39 real or personal property from a business or the purchase of a product
40 or service and no more than eighteen months have elapsed from the
41 date of the purchase, rental or lease.

42 (5) "Personal information" means any information that, when it was
43 disclosed, identified, described or was able to be associated with, an
44 individual, including, but not limited to: (A) An individual's name and
45 address, (B) an electronic mail address, (C) a date of birth or age, (D)
46 names or numbers of children, (E) real property purchased, leased or

47 rented, (F) a Social Security number, bank account or credit or debit
48 card number, and (G) payment history.

49 (6) "Third party" or "third parties" means one or more of the
50 following: (A) A business that is a separate legal entity from the
51 business that has an established business relationship with a
52 consumer, (B) a business that has access to a database that is shared
53 among businesses, if the business is authorized to use the database for
54 direct marketing purposes, unless the use of the database is exempt
55 from being considered a disclosure for direct marketing purposes, or
56 (C) a business not affiliated by a common ownership or common
57 corporate control with the web site operator.

58 Sec. 2. (NEW) (*Effective January 1, 2009*) (a) Any commercial Internet
59 web site operator, with whom a consumer residing in this state has an
60 established business relationship, shall, upon written request by such
61 consumer, clearly and conspicuously disclose to the consumer whether
62 or not, within the calendar year immediately preceding such request,
63 the operator has disclosed personal information to third parties, and
64 whether or not the operator knows or reasonably should have known
65 that the third parties used the personal information for the direct
66 marketing purposes of a third party. A request pursuant to this section
67 may be mailed to the headquarters of such commercial Internet web
68 site operator or to an electronic mail address provided by the operator.
69 A complete response pursuant to this section shall be provided to the
70 consumer within thirty days of such request.

71 (b) If the commercial Internet web site operator has disclosed
72 personal information to third parties, the operator shall include in its
73 response: (1) The name and addresses of the third parties and the
74 general business of such third parties, and (2) the type of personal
75 information provided to such third parties. If the operator discloses
76 that such third party is an affiliated company, the operator shall
77 describe the affiliation in clear and conspicuous terms.

78 (c) A commercial Internet web site operator that is required to
79 comply with this section is not obligated to provide information

80 associated with specific individuals and may provide the information
81 required by this section in a standardized format.

82 (d) A commercial Internet web site operator that is required to
83 comply with this section is not obligated to do so in response to a
84 request from a customer more than once during the course of any
85 calendar year.

86 (e) If a commercial Internet web site operator has adopted in its
87 privacy policy a policy of not disclosing personal information of
88 consumers to third parties for the direct marketing purposes of a third
89 party unless the customer first affirmatively agrees to that disclosure,
90 or of not disclosing the personal information of customers to third
91 parties for the third parties' direct marketing purposes if the customer
92 has exercised an option that prevents that information from being
93 disclosed to third parties for those purposes, a response to a request
94 pursuant to this section shall also include a notice to the consumer of
95 the right to prevent such disclosure in accordance with the privacy
96 policy and the process for exercising such right.

97 (f) For purposes of this section, the following disclosures shall not
98 be deemed to be disclosures of personal information by an Internet
99 web site operator for a third party's direct marketing:

100 (1) Disclosures between the operator and a third party pursuant to
101 contracts or arrangements pertaining to any of the following: (A) The
102 processing, storage, management or organization of personal
103 information, or the performance of services on behalf of the Internet
104 web site operator during which personal information is disclosed, if
105 the third party that processes, stores, manages or organizes the
106 personal information does not use the information for a third party's
107 direct marketing purposes and does not disclose the information to
108 additional third parties for their direct marketing purposes, (B)
109 marketing products or services to consumers with whom the business
110 has an established business relationship where, as a part of the
111 marketing, the business does not disclose personal information to third
112 parties for the third parties' direct marketing purposes, (C)

113 maintaining or servicing accounts, including credit accounts and
114 disclosures pertaining to the denial of applications for credit or the
115 status of applications for credit and processing bills or insurance
116 claims for payment, (D) public record information relating to the right,
117 title, or interest in real property or information relating to property
118 characteristics, obtained from a governmental agency or entity or from
119 a real estate multiple listing service and not provided directly by the
120 consumer to a business in the course of an established business
121 relationship, and (E) jointly offering a product or service pursuant to a
122 written agreement with the third party that receives the personal
123 information, provided all of the following requirements are met: (i)
124 The product or service offered is a product or service of, and is
125 provided by at least one of the businesses that is a party to the written
126 agreement, (ii) the product or service is jointly offered, endorsed or
127 sponsored by, and clearly and conspicuously identifies for the
128 consumer, the businesses that disclose and receive the disclosed
129 personal information, and (iii) the written agreement provides that the
130 third party that receives the personal information is required to
131 maintain the confidentiality of the information and is prohibited from
132 disclosing or using the information other than to carry out the joint
133 offering or servicing of a product or service that is the subject of the
134 written agreement.

135 (2) Disclosures to or from a consumer reporting agency of a
136 consumer's payment history or other information pertaining to
137 transactions or experiences between the business and a customer, if
138 that information is to be reported in or used to generate a consumer
139 report as defined in subdivision (d) of Section 1681a of Title 15 of the
140 United States Code and use of that information is limited by the
141 federal Fair Credit Reporting Act, 15 USC Section 1681, et seq.

142 (3) Disclosures of personal information by a business to a third
143 party financial institution solely for the purpose of the business
144 obtaining payment for a transaction in which the consumer paid the
145 business for goods or services with a check, credit card, charge card or
146 debit card, if the consumer seeks the information required by

147 subdivision (a) of this section from the business obtaining payment,
148 whether or not the business obtaining payment knows or reasonably
149 should know that the third party financial institution has used the
150 personal information for its direct marketing purposes.

151 (4) Disclosures of personal information between a licensed agent
152 and its principal, if the personal information disclosed is necessary to
153 complete, effectuate, administer or enforce transactions between the
154 principal and the agent, whether or not the licensed agent or principal
155 also uses the personal information for direct marketing purposes, if
156 that personal information is used by each of them solely to market
157 products and services directly to customers with whom both have
158 established business relationships as a result of the principal and agent
159 relationship.

160 (5) Disclosures of personal information between a financial
161 institution and a business that has a private label credit card, affinity
162 card, retail installment contract or cobranded card program with the
163 financial institution, if the personal information disclosed is necessary
164 for the financial institution to maintain or service accounts on behalf of
165 the business with which it has a private label credit card, affinity card,
166 retail installment contract or cobranded card program, or to complete,
167 effectuate, administer or enforce customer transactions or transactions
168 between the institution and the business, whether or not the institution
169 or the business also uses the personal information for direct marketing
170 purposes, if that personal information is used solely to market
171 products and services directly to customers with whom both the
172 business and the financial institution have established business
173 relationships as a result of the private label credit card, affinity card,
174 retail installment contract or cobranded card program.

175 (g) If a list, description or grouping of consumer names or addresses
176 is disclosed to a third party sharing the same brand name for direct
177 marketing purposes in a manner that permits the third party to
178 identify, determine or extrapolate the personal information from
179 which the list was derived and that personal information, when it was

180 disclosed, identified, described or was associated with a consumer, any
181 other personal information shall be considered personal information
182 for purposes of this section.

183 (h) If a list, description or grouping of customer names or addresses
184 is derived using any of these categories specified in this act and is
185 disclosed to a third party for direct marketing purposes in a manner
186 that permits the third party to identify, determine or extrapolate any
187 other personal information from which the list was derived, and that
188 personal information when it was disclosed identified, described or
189 was associated with an individual, the categories set forth in this act
190 that correspond to the personal information used to derive the list,
191 description or grouping shall be considered personal information for
192 purposes of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2009	New section
Sec. 2	January 1, 2009	New section

Statement of Legislative Commissioners:

"Internet" was added in sections 1 and 2 for clarity.

GL *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 515*****AN ACT CONCERNING INTERNET WEB SITE TRACKING OF CONSUMER DATA.*****SUMMARY:**

This bill requires a commercial web site operator to disclose clearly and conspicuously once per calendar year, if a consumer requests, whether it has disclosed in the preceding calendar year (1) personal information to third parties and (2) knows or reasonably should know that these parties used the personal information for direct marketing.

The requirement applies if the web site operator and a consumer have an established business relationship on its web site.

The bill provides that consumer requests may be mailed to the operator's headquarters or to a provided e-mail address. It requires operators to respond within 30 days of a request. The bill specifies that "disclose" means to disclose, release, transfer, disseminate, or otherwise communicate orally, in writing, electronically, or in any other way to a third party.

EFFECTIVE DATE: January 1, 2009

PERSONAL INFORMATION

The bill applies to "personal information," which it defines as any information that, when disclosed, identified, or described was able to be associated with an individual, including:

1. an individual's name and address;
2. an e-mail address;
3. a date of birth or age;

4. names or numbers of children;
5. real property purchased, leased or rented;
6. a Social Security, bank account, or credit or debit card number;
and
7. payment history.

COMMERCIAL WEB SITE OPERATORS

The bill defines a commercial web site operator as a business that (1) sells, leases, or offers to sell or lease goods or services intended primarily for personal, family, or household purposes (consumer goods or services) and (2) operates a web site with its commercial name, including a site operated by another under a contract.

DIRECT MARKETING PURPOSES

The sale, rental, exchange, or lease of personal information for consideration to businesses is a direct marketing purpose of the business that paid for it. "Direct marketing purposes," under the bill, means using personal information to solicit or induce a purchase, rental, lease, or exchange of consumer goods or services by mail, telephone, or e-mail.

Under the bill, "direct marketing purposes" do not include the use of personal information:

1. by bona fide tax-exempt charitable or religious organizations to solicit charitable contributions;
2. to raise funds from and communicate with individuals regarding politics and government;
3. by a third party when that party receives personal information solely as a consequence of having bought permanent ownership of accounts that might contain personal information; or
4. by a third party when it receives personal information solely as

a consequence of a single transaction that necessitated personal information to be disclosed.

ESTABLISHED BUSINESS RELATIONSHIP

Under the bill, an “established business relationship” is:

1. one formed by a voluntary, two-way communication between a business and a consumer, with or without payment, to purchase, rent, or lease property or to obtain a product or service from the business, if the relationship is ongoing and has not been expressly terminated by either the business or the consumer or
2. if the relationship is not ongoing, one solely established by the purchase, rental, or lease of property from a business or the purchase of a product or service within the past 18 months.

THIRD PARTIES

“Third parties” are:

1. businesses that are separate legal entities from the business that has an established business relationship with a consumer;
2. businesses that have access to a database that is shared among businesses, if they are authorized to use it for direct marketing purposes, unless the bill exempts the use of the database; or
3. businesses that are not affiliated by a common ownership or common corporate control with the web site operator.

RESPONSES

If a web site operator has disclosed personal information to third parties, it must include in its response to a consumer request the names and addresses of the third parties and their general businesses, and the type of personal information provided. If the operator discloses that the third party is an affiliate, it must describe the affiliation clearly and conspicuously.

The bill states that an operator need not required provide information associated with a specific individual and may provide the information in a standardized format.

If an operator has a policy of (1) not disclosing consumers' personal information to third parties for direct marketing purposes unless the customer first affirmatively agreed, or (2) if the customer has exercised an option that prevents that information from being disclosed, the bill requires responses also to include a notice of the right and process to prevent such disclosure.

LIST INFORMATION

The bill deems "other personal information" to be personal information under the bill if:

1. a list, description, or grouping of consumer names or addresses is disclosed to a third party sharing the same brand name in a way that enables the third party to identify, determine, or extrapolate the personal information from which the list was derived and
2. the personal information when it was disclosed identified, described, or was associated with a consumer.

The bill deems information categories to be personal information if:

1. a list, description, or grouping of customer names or addresses is derived using information categories and is disclosed to a third party for direct marketing purposes in a way that the third party is able to identify, determine, or extrapolate any other personal information and
2. the personal information when it was disclosed identified, described, or was associated with an individual.

EXEMPT DISCLOSURES

The bill exempts disclosures to third parties:

1. made to process, store, manage, organize personal information, or perform services for the operator, if the third party does not use it for its direct marketing purposes and does not disclose it to other third parties for their direct marketing purposes;
2. made to market products or services to consumers with whom the business has an established business relationship if, as a part of the marketing, the business does not disclose personal information to third parties for their direct marketing purposes;
3. made to maintain or service accounts, including credit accounts and disclosures relating to the denial or status of credit applications and processing bills or insurance claims;
4. of public record information relating to the right, title, or interest in real property or to property characteristics obtained from a government agency or a real estate multiple listing service and not provided directly by the consumer to a business in the course of an established business relationship; and
5. made when jointly offering a product or service under a written agreement with the third party, if all of the following requirements are met: (a) the product or service is a product or service of, and is provided by, at least one of the businesses; (b) the product or service is jointly offered, endorsed, or sponsored by, and clearly and conspicuously identifies for the consumer the businesses that disclose and receive the disclosed personal information; and (c) the written agreement provides that the party that receives the personal information must keep it confidential and is prohibited from disclosing or using it except to carry out the joint offering.

The bill also exempts disclosures of personal information:

1. made to or by a consumer reporting agency of a consumer's payment history or other related information, if the information is reported in or used to generate a consumer report as defined

by the federal Fair Credit Reporting Act;

2. by a business to a third party financial institution solely for the business to obtain payment for a transaction in which the consumer paid by check or credit, charge, or debit card, whether or not the business obtaining payment knows or reasonably should know that the financial institution has used the personal information for its direct marketing purposes;
3. between a licensed agent and its principal, if the personal information disclosed is necessary to complete, effectuate, administer, or enforce transactions between the principal and the agent, whether or not the agent or principal also uses the personal information for direct marketing purposes, if each uses the information solely to market products and services directly to customers with whom both have established business relationships as a result of their relationship;
4. between a financial institution and a business that has a private label credit card, affinity card, retail installment contract, or co-branded card program with the financial institution, if the personal information disclosed is necessary to maintain or service accounts on behalf of the business or to complete, effectuate, administer, or enforce customer transactions or transactions between the institution and the business, whether or not either also uses the personal information for direct marketing purposes, if that personal information is used solely to market products and services directly to customers with whom both have established business relationships as a result of the joint program.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 19 Nay 0 (03/06/2008)